



CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 22-C0001]

Settlement Agreement with Core Health & Fitness, LLC

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission publishes in the Federal Register any settlement that it provisionally accepts under the Consumer Product Safety Act. Published below is a provisionally accepted Settlement Agreement with Core Health and Fitness, LLC, containing a civil penalty in the amount of six million, five hundred thousand dollars (\$6,500,000), subject to the terms and conditions of the Settlement Agreement. The Commission voted unanimously (4-0) to provisionally accept the proposed Settlement Agreement and Order pertaining to Core Health and Fitness, LLC.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Division of the Secretariat by February 18, 2022.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 22-C0001, Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone: (240) 863-8938 (mobile), (301) 504-7479 (office); email: cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: Liana G.T. Wolf, Trial Attorney, Division of Enforcement and Litigation, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; lwolf@cpsc.gov, 301-504-7733.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: January 31, 2022.

Alberta E. Mills,

Secretary.

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of:

CORE HEALTH & FITNESS, LLC

CPSC Docket No.: 22-C0001

SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act (“CPSA”), 15 U.S.C. §§ 2051-2089, and 16 C.F.R. § 1118.20, Core Health & Fitness, LLC (“Core”) and the United States Consumer Product Safety Commission (“Commission”), through its staff, hereby enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order resolve staff’s charges set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051-2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Core is a privately held company, organized and existing under the laws of the state of Nevada, with its principal place of business in Vancouver, Washington.

STAFF CHARGES

4. Between 2001 and 2017, Unisen Inc. and Core manufactured, distributed, and offered for sale approximately 3,600 Cable Cross Over Machines and Dual Adjustable Pulley Machines.

5. Between 2001 and 2010, Unisen Inc. manufactured, distributed, and offered for sale in the United States the Cable Cross Over Machines and Dual Adjustable Pulley Machines.

6. In November 2010, Core purchased the assets of Unisen Inc. and took over the distribution of the Cable Cross Over Machines and Dual Adjustable Pulley Machines.

7. Between 2010 and 2017, Core manufactured, distributed, and offered for sale in the United States the Cable Cross Over Machines and Dual Adjustable Pulley Machines.

8. The Cable Cross Over Machines and Dual Adjustable Pulley Machines (collectively, the “Subject Products”) are “consumer products” that were “distribut[ed] in commerce,” as those terms are defined or used in sections 3(a)(5) and (8) of the CPSA, 15 U.S.C. § 2052(a)(5), (8). Core is a “manufacturer” and “distributor” of the Subject Products, as such terms are defined in sections 3(a)(7) and (11) of the CPSA, 15 U.S.C. § 2052(a)(7), (11).

Violation of CPSA Section 19(a)(4)

9. The Subject Products contain a defect which could create a substantial product hazard and create an unreasonable risk of serious injury or death because the height adjusting carriages on the machines can loosen and fall on the consumer, posing an impact injury hazard.

10. Although the Subject Products were sold between 2001 and 2017, Core was only able to produce incident information Core received after August 2012.

11. Between 2012 and February 2017, Core received reports of 55 incidents involving falling carriages, including 11 incidents that resulted in head lacerations requiring stitches or staples.

12. Despite information that reasonably supported the conclusion that the Subject Products contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death, Core did not immediately report to the Commission.

13. In February 2017, Core filed a Full Report with the Commission under 15 U.S.C. § 2064(b) concerning the Subject Products.

14. Core and the Commission jointly announced a Fast Track recall of the Subject Products on July 12, 2017. The press release announcing the recall noted that the height adjusting carriage assembly can loosen and fall on the consumer, posing an impact injury hazard.

Failure to Timely Report

15. Despite having information reasonably supporting the conclusion that the Subject Products contained a defect or created an unreasonable risk of serious injury or death, Core did not notify the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3), (4), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

16. Because the information in Core's possession about the Subject Products constituted actual and presumed knowledge, Core knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

17. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Core is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

RESPONSE OF CORE

18. This Agreement does not constitute an admission by Core to the staff's charges set forth in paragraphs 4 through 17 above, and Core specifically refutes the staff's findings that the Cable Cross Over Machines and Dual Adjustable Pulley Machines contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death; that Core failed to notify the Commission in a timely manner, in accordance with Section

15(b) of the CPSA, 15 U.S.C. 2064(b); and that there was any “knowing” violation of the CPSA as that term is defined in 15 U.S.C. 2069(d).

19. Core enters into this Agreement to settle this matter without the delay and expense of litigation and agrees to pay the amount referenced below in compromise of the staff’s charges.

20. Over the relevant time period, Core took various steps to address safety issues gyms brought to its attention in an effort to support their service and maintain the Subject Products. Due to the role of fitness clubs in monitoring and maintaining the equipment, and communicating any such issues to the manufacturer, consumer reports can be difficult for a manufacturer to obtain and evaluate, may not be received promptly, and may not include complete and accurate information. Core was not aware of a systemic or overarching issue with the Subject Products, but rather was working to address what it viewed as a routine maintenance issue.

21. Core voluntarily notified the Commission in connection with the Subject Products and carried out a voluntary recall in cooperation with the Commission.

22. At all relevant times, Core had a product safety compliance program, including quality control personnel and a product safety testing program.

AGREEMENT OF THE PARTIES

23. Under the CPSA, the Commission has jurisdiction over the matter involving the Subject Products and over Core.

24. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Core or a determination by the Commission that Core violated the CPSA’s reporting requirements.

25. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Core shall pay a civil penalty in the amount of six million five hundred thousand dollars (\$6,500,000) within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via <http://www.pay.gov>, for allocation to, and credit against, the payment obligations of Core under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

26. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by Core to the United States, and interest shall accrue and be paid by Core at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Default, until all amounts due have been paid in full (hereinafter "Default Payment Amount" and "Default Interest Balance"). Core shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and Core agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. Core shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

27. After staff receives this Agreement executed on behalf of Core, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

28. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) the Commission's final acceptance of this Agreement and service of the accepted Agreement upon Core, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

29. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Core and (ii) the date of issuance of the final Order, for good and valuable consideration, Core hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement: (i) an administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission of whether Core failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

30. Core shall maintain an improved compliance program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed, or sold by Core, and which shall contain the following elements:

- (i) written standards, policies, and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance is conveyed effectively to personnel responsible for CPSA compliance, whether or not an injury is referenced;
- (ii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;
- (iii) effective communication of company compliance-related policies and procedures regarding the CPSA to all applicable employees through training programs or otherwise;
- (iv) Core's senior management responsibility for, and general board oversight of, CPSA compliance; and
- (v) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to CPSC staff upon request.

31. Core shall maintain and enforce a system of internal controls and procedures designed to ensure that, with respect to all consumer products imported, manufactured, distributed, or sold by Core:

- (i) information required to be disclosed by Core to the Commission is recorded, processed, and reported in accordance with applicable law;
- (ii) all reporting made to the Commission is timely, truthful, complete, accurate, and in accordance with applicable law; and

(iii) prompt disclosure is made to Core's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, Core's ability to record, process and report to the Commission in accordance with applicable law.

32. Upon request of staff, Core shall provide written documentation of its internal controls and procedures, including, but not limited to, the effective dates of the procedures and improvements thereto. Core shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials, and personnel deemed necessary by staff to evaluate Core's compliance with the terms of the Agreement.

33. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

34. Core represents that the Agreement: (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of Core, enforceable against Core in accordance with its terms. The individuals signing the Agreement on behalf of Core represent and warrant that they are duly authorized by Core to execute the Agreement.

35. The signatories represent that they are authorized to execute this Agreement.

36. The Agreement is governed by the laws of the United States.

37. The Agreement and the Order shall apply to, and be binding upon, Core and each of its successors, transferees, and assigns; and a violation of the Agreement or Order may subject Core, and each of its successors, transferees, and assigns, to appropriate legal action.

38. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

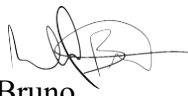
39. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party, for that reason, in any subsequent dispute.

40. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

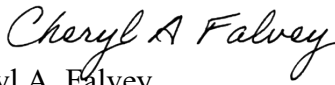
41. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Core agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

CORE HEALTH & FITNESS, LLC

Dated: 1/11/22

By: 
Michael Bruno
Core Health & Fitness, LLC
Chief Executive Officer

Dated: 1/11/22

By: 
Cheryl A. Falvey
Counsel to Core Health & Fitness, LLC

U.S. CONSUMER PRODUCT SAFETY
COMMISSION

Mary B. Murphy
Director, Division of Enforcement and Litigation
Office of Compliance and Field Operations

Dated: 1/12/2022

By: Liana G.T. Wolf  Digitally signed by Liana G.T.
Wolf
Date: 2022.01.12 17:58:59 -05'00'

Liana G.T. Wolf
Trial Attorney, Division of Enforcement and Litigation
Office of Compliance and Field Operations

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of:

CORE HEALTH & FITNESS, LLC

CPSC Docket No.:
22-C0001

ORDER

Upon consideration of the Settlement Agreement entered into between Core Health & Fitness, LLC (“Core”), and the U.S. Consumer Product Safety Commission (“Commission”), and the Commission having jurisdiction over the subject matter and over Core, and it appearing that the Settlement Agreement and the Order are in the public interest, it is:

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED that Core shall comply with all terms of the Settlement Agreement including payment of a civil penalty in the amount of six million five hundred thousand dollars (\$6,500,000), within thirty (30) days after service of the Commission’s final Order accepting the Settlement Agreement. The payment shall be made by electronic wire transfer to the Commission via: <http://www.pay.gov>. Upon the failure of Core to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Core at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b). If Core fails to make such payment or to comply in full with any other provision of the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the 25th, day of January 2022.

BY ORDER OF THE COMMISSION:

/s/

Alberta Mills, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. 2022-02211 Filed: 2/2/2022 8:45 am; Publication Date: 2/3/2022]